

111TH CONGRESS  
1ST SESSION

# H. R. 3659

Amend the Internal Revenue Code of 1986 to allow a credit against income tax for amounts paid for energy efficient property placed in service in commercial buildings pursuant to an approved energy efficiency plan.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2009

Mr. WU introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

Amend the Internal Revenue Code of 1986 to allow a credit against income tax for amounts paid for energy efficient property placed in service in commercial buildings pursuant to an approved energy efficiency plan.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Building Energy Tax  
5 Credit Act of 2009”.

6 **SEC. 2. COMMERCIAL BUILDING ENERGY PROJECT CREDIT.**

7 (a) IN GENERAL.—Subpart D of part IV of sub-  
8 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to business related credits) is amended by  
 2 adding at the end the following new section:

3 **“SEC. 45R. COMMERCIAL BUILDING ENERGY PROJECT**  
 4 **CREDIT.**

5 “(a) ALLOWANCE OF CREDIT.—For purposes of sec-  
 6 tion 38, the commercial building energy project credit is  
 7 an amount equal to 35 percent of the cost of energy con-  
 8 servation commercial building property placed in service  
 9 by the taxpayer.

10 “(b) MAXIMUM AMOUNT OF CREDIT.—The credit  
 11 under subsection (a) with respect to any building for any  
 12 taxable year shall not exceed the excess (if any) of—

13 “(1) the product of—

14 “(A) \$4.00, and

15 “(B) the square footage of the building,  
 16 over

17 “(2) the aggregate credit allowed under sub-  
 18 section (a) with respect to the building for all prior  
 19 taxable years.

20 “(c) ENERGY CONSERVATION COMMERCIAL BUILD-  
 21 ING PROPERTY.—For purposes of this section, the term  
 22 ‘energy conservation commercial building property’ means  
 23 property—

24 “(1) with respect to which depreciation (or am-  
 25 ortization in lieu of depreciation) is allowable,

1           “(2) which is installed on or in any building  
2           which is located in the United States, and

3           “(3) which is installed as part of a commercial  
4           building energy project.

5           “(d) COMMERCIAL BUILDING ENERGY PROJECT.—  
6           For purposes of this section, the term ‘commercial build-  
7           ing energy project’ means a project—

8           “(1)(A) to install energy efficient commercial  
9           building property (as defined in section 179D(c)), or

10          “(B) with respect to a building, to achieve an  
11          energy consumption rate which is not more 60 per-  
12          cent of the energy consumption rate under the  
13          ASHRAE Standard 90.1–2007 for commercial  
14          buildings, and

15          “(2) with respect to which credit amounts have  
16          been allocated by an energy credit agency under sub-  
17          section (e).

18          “(e) ALLOCATIONS OF CREDIT AMOUNTS.—

19          “(1) CREDIT LIMITATION WITH RESPECT TO  
20          PROJECT.—The amount of credit determined under  
21          this section for any taxable year with respect to any  
22          project shall not exceed the State energy credit dol-  
23          lar amount allocated to such project under this sub-  
24          section.

1           “(2) CREDIT DOLLAR AMOUNT FOR AGEN-  
2 CIES.—

3           “(A) IN GENERAL.—The aggregate credit  
4 dollar amount which an energy credit agency  
5 may allocate for any calendar year is the limita-  
6 tion allocated under subparagraph (B) for such  
7 calendar year to such agency.

8           “(B) CREDIT LIMITATION ALLOCATED TO  
9 STATE ENERGY AGENCIES.—

10           “(i) IN GENERAL.—The Secretary  
11 shall allocate for each calendar year the  
12 national energy credit limitation among the  
13 States in proportion to the population of  
14 the State. Such limitation shall be allo-  
15 cated to the energy credit agency of each  
16 such State. If there is more than 1 energy  
17 credit agency of a State, all such agencies  
18 shall be treated as a single agency.

19           “(ii) NATIONAL ENERGY CREDIT LIM-  
20 TATION.—There is a national energy credit  
21 limitation for each calendar year of  
22 \$100,000,000.

23           “(iii) POPULATION.—For purposes of  
24 this paragraph, population shall be deter-  
25 mined in accordance with section 146(j).

1 “(3) SPECIAL RULES.—

2 “(A) BUILDING MUST BE LOCATED WITH-  
3 IN JURISDICTION OF CREDIT AGENCY.—An en-  
4 ergy credit agency may allocate its aggregate  
5 energy credit dollar amount only to projects  
6 with respect to buildings located in the jurisdic-  
7 tion of the governmental unit of which such  
8 agency is a part.

9 “(B) AGENCY ALLOCATIONS IN EXCESS OF  
10 LIMIT.—If the aggregate energy credit dollar  
11 amounts allocated by an energy credit agency  
12 for any calendar year exceed the portion of the  
13 national energy credit limitation allocated to  
14 such agency for such calendar year, the energy  
15 credit dollar amounts so allocated shall be re-  
16 duced (to the extent of such excess) for projects  
17 in the reverse of the order in which the alloca-  
18 tions of such amounts were made.

19 “(4) ENERGY CREDIT AGENCY.—The term ‘en-  
20 ergy credit agency’ means any agency authorized to  
21 carry out this subsection.

22 “(f) RESPONSIBILITIES OF ENERGY CREDIT AGEN-  
23 CIES.—

24 “(1) IN GENERAL.—Notwithstanding any other  
25 provision of this section, the energy credit dollar

1 amount with respect to any project shall be zero un-  
2 less such amount was allocated pursuant to a quali-  
3 fied allocation plan of the energy credit agency  
4 which is approved by the governmental unit (in ac-  
5 cordance with rules similar to the rules of section  
6 147(f)(2) (other than subparagraph (B)(ii) thereof))  
7 of which such agency is a part.

8 “(2) QUALIFIED ALLOCATION PLAN.—For pur-  
9 poses of this subsection—

10 “(A) IN GENERAL.—The term ‘qualified  
11 allocation plan’ means any plan which meets  
12 the requirements of subparagraphs (B) through  
13 (E).

14 “(B) SELECTION CRITERIA.—The require-  
15 ments of this subparagraph are met if such  
16 plan sets forth selection criteria to be used to  
17 determine priorities of the energy credit agency  
18 which are appropriate to local conditions. An  
19 energy credit agency may establish selection cri-  
20 teria which are more stringent than the require-  
21 ments under subsection (d)(1)(B).

22 “(C) PROJECT PREFERENCE.—The re-  
23 quirements of this subparagraph are met if  
24 such plan gives preference in allocating energy  
25 credit dollar amounts among selected projects

1 to those projects which achieve the most energy  
2 savings. A plan shall not be treated as failing  
3 to meet the requirements of this subsection  
4 solely by reason of allocating credit dollar  
5 amounts ratably among projects with propor-  
6 tionally more allocated to those projects which  
7 achieve higher energy savings.

8 “(D) COMPLIANCE MONITORING.—The re-  
9 quirements of this subparagraph are met if  
10 such plan establishes a program which—

11 “(i) is certified by the Secretary as  
12 meeting the requirements of this subpara-  
13 graph, and

14 “(ii) provides for monitoring by the  
15 agency (or an agent or other private con-  
16 tractor of such agency) for noncompliance  
17 with the provisions of this section and noti-  
18 fying the Internal Revenue Service of any  
19 such noncompliance of which such agency  
20 becomes aware.

21 “(E) CERTIFICATION METHODS.—

22 “(i) IN GENERAL.—The requirements  
23 of this subparagraph are met if such plan  
24 has a certification procedure for inspection  
25 and testing by qualified individuals under

1 which only projects complying with energy-  
2 savings plans and targets are certified.

3 “(ii) QUALIFIED INDIVIDUALS.—Indi-  
4 viduals qualified to determine compliance  
5 shall be only those individuals who are rec-  
6 ognized by the energy credit agency for  
7 such purposes.

8 “(iii) PRE-CERTIFICATION.—The re-  
9 quirements of this subparagraph shall be  
10 treated as met if the plan includes a pre-  
11 certification procedure for commercial  
12 building energy projects, unless application  
13 fees with respect to a project under such  
14 pre-certification procedure exceeds 1 per-  
15 cent of the estimated cost of such project.

16 “(g) TRANSFER OF CREDIT.—

17 “(1) IN GENERAL.—A person described in para-  
18 graph (4) may transfer the credit which would (but  
19 for the tax-exempt status of such person) be allow-  
20 able under subsection (a) with respect to energy con-  
21 servation commercial building property placed in  
22 service by such person. A credit may only be trans-  
23 ferred once and may only be transferred to another  
24 person not described in such paragraph.



1           “(2) TREATMENT OF TRANSFEREE.—The per-  
2       son to whom the credit is transferred under this  
3       subsection shall be treated for purposes of this title  
4       as the taxpayer with respect to whom the credit is  
5       allowable under subsection (a).

6           “(3) TREATMENT OF TRANSFEROR.—

7               “(A) TRANSFER PROCEEDS TREATED AS  
8       ARISING FROM ESSENTIAL GOVERNMENT FUNC-  
9       TION.—Any proceeds derived by a person de-  
10      scribed in paragraph (4)(B) from the transfer  
11      of any credit under this subsection shall be  
12      treated as arising from the exercise of an essen-  
13      tial government function.

14           “(B) CREDIT NOT INCOME.—Any proceeds  
15      derived from the transfer of a credit under this  
16      subsection shall not treated as income for pur-  
17      poses of this title.

18           “(4) PERSONS DESCRIBED.—A person is de-  
19      scribed in this paragraph if the person is—

20               “(A) an organization exempt from tax  
21      under section 501(a), or

22               “(B) any State or political subdivision  
23      thereof, the District of Columbia, any posses-  
24      sion of the United States, or any agency or in-  
25      strumentality of any of the foregoing.

1       “(h) DENIAL OF DOUBLE BENEFIT.—No credit shall  
2 be allowed under this section for any expense for which  
3 a deduction is allowed under any other provision of this  
4 chapter.

5       “(i) BASIS REDUCTION.—For purposes of this sub-  
6 title, if a credit is allowed under this section with respect  
7 to any energy conservation commercial building property,  
8 the basis of such property shall be reduced by the amount  
9 of the credit so allowed.

10       “(j) REGULATIONS.—The Secretary may prescribe  
11 such regulations as may be necessary or appropriate to  
12 carry out this section.”.

13       (b) STATE GUIDANCE.—The Secretary of Energy, in  
14 consultation with the Secretary of Treasury, shall develop  
15 and provide guidance to States and energy credit agencies  
16 (as defined in section 45R(e) of the Internal Revenue Code  
17 of 1986) for establishing methods of measuring overall en-  
18 ergy savings of commercial building energy projects (as  
19 defined in section 45R(e) of such Code), including meth-  
20 ods for comparing energy savings ratings under industry  
21 energy standards for commercial buildings other than  
22 ASHRAE Standard 90.1–2007 with such ASHRAE  
23 standard.

24       (c) CREDIT TREATED AS PART OF GENERAL BUSI-  
25 NESS CREDIT.—Subsection (b) of section 38 of such Code

1 is amended by striking “plus” at the end of paragraph  
2 (33), by striking the period at the end of paragraph (34)  
3 and inserting “, plus”, and by adding at the end the fol-  
4 lowing new paragraph:

5           “(35) commercial building energy credit deter-  
6 mined under section 45R(a).”.

7           (d) CONFORMING AMENDMENT.—Subsection (a) of  
8 section 1016 of such Code is amended by striking “and”  
9 at the end of paragraph (36), by striking the period at  
10 the end of paragraph (37) and inserting “, and”, and by  
11 adding at the end the following new paragraph:

12           “(38) to the extent provided in section 45R(i).”.

13           (e) CLERICAL AMENDMENT.—The table of sections  
14 for subpart D of part IV of subchapter A of chapter 1  
15 is amended by adding at the end the following new item:

“Sec. 45R. Commercial building energy project credit.”.

16           (f) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to property placed in service after  
18 the date of the enactment of this Act.

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